

## Inspection Process of Notary as Witnesses and Suspects in The Case of Crime

Adad<sup>1</sup> and Widayati<sup>2</sup>

**Abstract.** The existence of the Notary institution based on the needs of the community in making authentic act as a binding evidence. Notary role in serving the public interest is providing services in deed and other tasks that require the services of a Notary. Deed issued by Notary ensuring legal certainty for the public. Notaries have a role as well in running the legal profession can not be separated from the fundamental issues relating to the functions and role of the law itself. The authority Notary as stated in Article 15 UUJN is made the authentic act on all deeds, agreements, and provisions required by legislation and / or desired by an interested party, to be stated in an authentic deed, guaranteeing the creation date of the deed, saving certificates, provide a copy, and official copies, all along the deed is not assigned or excluded to officials or other persons specified by law. Notaries also authorized to certify the signatures and set a firm date of a letter under the hand by enrolling in a special book (legalization). Besides qualify predetermined law in order for a certificate to be authentic, a Notary in his duties shall carry out their duties with discipline, professional and moral integrity should not be in doubt. What is stated in the beginning and end of the deed is the responsibility of the notary is a phrase that reflects the true situation at the time of a deed. As stated in Article 65 UUJN: "Notary, Substitute Notary, Special Substitute Notary, and Acting Notary responsible for any deed that is made despite the Protocol Notary has been assigned or transferred to the storage Notary Protocol.

Keywords: Inspection Process; Notary; Witnesses.

### 1. Introduction

The existence of the Notary institution based on the needs of the community in making authentic act as a binding evidence. Notary role in serving the public interest is providing services in deed and other tasks that require the services of a Notary. Deed issued by Notary ensuring legal certainty for the public. Notaries have a role as well in running the legal profession can not be separated from the fundamental issues relating to the functions and role of the law itself.

The authority Notary as stated in Article 15 UUJN is made the authentic act on all deeds, agreements, and provisions required by legislation and / or desired by an interested party, to be stated in an authentic deed, guaranteeing the creation date of the deed, saving certificates, provide a copy, and official copies, all along the deed is

---

<sup>1</sup> Student Masters (S-2) of Law Faculty of Law UNISSULA Semarang email [adad\\_thea@yahoo.com](mailto:adad_thea@yahoo.com)

<sup>2</sup> Lecturer of Faculty of Law Unissula Semarang

not assigned or excluded to officials or other persons specified by law. Notaries also authorized to certify the signatures and set a firm date of a letter under the hand by enrolling in a special book (legalization). It also includes doing *waarmerken* or posting letters under the hand by enrolling in a special book, make copies of the original copy of the letter under the hand form which contains a description as written and illustrated in the letter in question. Notaries also authorized to approve their compatibility with the photocopy of the original letter (legalized), as well as providing legal counseling in connection with the deed, but it can also create a notary deed relating to land and make a treatise deed auction.<sup>3</sup>

If a certificate is authentic deed, the deed will have three (3) function to the parties that made it are:

- as evidence that the parties concerned have held a certain agreement;
- as evidence for the parties that what is written in the agreement is the goal and desire of the parties;
- as evidence to third parties that on a certain date unless specified otherwise the parties have entered into an agreement and that the agreement is in accordance with the will of the parties.

Authentic act essentially contains formal correctness notified in accordance with what the parties to the Notary. Notary has the obligation to implement what is contained in the deed truly understood and in accordance with the will of the parties, that is the way to read it, so that the contents of the deed becomes clear.<sup>4</sup> In the event of any violation in the manufacture of deed when where there is maladministration in the manufacturing process, it can be categorized to the tort where the gradation was an error when fulfilling PMH elements, in this case a Notary may be held accountable.

Crime is a basic understanding of the Criminal Law. Crime is a juridical sense, it is different in terms of misconduct or crime (crime or *verbrechen* or *misdad*) which is defined by juridical (legal) or criminological. According Wirjono Projodikoro.

Which criminalized acts referred to a crime, or a crime, or a criminal act, or acts may be punished, or things that may be subject to the laws or acts that can be punished. According to the concept of the Penal Code Article 11 as cited 2004-2005 Barda Nawawi Arief stated:<sup>5</sup>

- Crime is the act of doing or not doing something by legislation declared as prohibited and punishable by;
- Expressed as a criminal offense, in addition to such actions are prohibited and punishable by legislation, should also be against the law or contrary to public legal awareness;
- Every crime is always deemed to be against the law, unless there is justification

---

<sup>3</sup> Abdul Ghofur 2009 *Lembaga Kenotariatan Indonesia* UUI Press Yogyakarta p.13.

<sup>4</sup> Sjaifurracman 2011 *Aspek Pertanggungjawaban Notaris dalam Pembuatan Akta* Mandar Maju Bandung p 11.

<sup>5</sup> Barda Nawawi Arief *Perkembangan Sistem Pemidaan di Indonesia* Pustaka Magister Semarang 2007 p. 53.

Human behavior are included in the formulation of the offense, is against the law and can be censured. Terms unlawful or reprehensible nature sometimes included as an element of the legislation (so written) in the formulation of the offense. but in most cases if the formulation of the offense have been fulfilled, Sefat illegal and reprehensible nature is presumed to exist, unless there is a reason that the criminal eraser.<sup>6</sup>

Authentic act essentially contains formal correctness notified in accordance with what the parties to the Notary. Notary a deed which is based on the evidence, testimony and statements by penghadap and notaries have an obligation to ensure that what is contained in the Deed truly understood and in accordance with the will of the parties, that is the way to read it so clear the contents of Deed these and provide access to information, including access to legislation relating to the parties signatory to the deed.

In order to conduct this journal writing can be performed well and regularly, so that the purpose of writing that is expected to be achieved, the authors consider it necessary to formulate the problem related to the title of this journal. The formulation of the problem in this paper is as follows: 1) How liabilities to withheld notary regarding use notary break up right as witnesses in the criminal justice process? 2) How the limits of liability secret mandatory supposedly set in UUJN in the future?

## 2. Results And Discussion

### 2.1. Liability Should Withheld Regarding Usage Notary Break up Rights as witnesses in the Criminal Justice Process

Notary in carrying out his duty not only constantire will of the parties in an authentic deed, provide appropriate referrals to people who need his services in the field of law, in particular the private law is also the duty of a notary as a form of service to the community. Authentic deed made by and / or before a notary be valid as evidence that can be used in both civil and criminal proceedings, only the value of the proof is different. In the Criminal Procedure Code verification system adopted under the legislation negatively (negative wettelijk) as well as the minimum threshold of proof (minimum bewijs) lead evidence in the form of an authentic deed alone can not be the basis of the judge to decide a case.<sup>7</sup> Both of these are connected to each other means that the terms of the last born of the terms first, in order to obtain a valid conviction. Judge will not only see what was explained in the deed, the judge will look for other evidence such as witness testimony in order to see the truth materill on legal events occurring in order to find the legal facts in the trial.

---

<sup>6</sup> D. Schaffmeister N. Keijzer and E. PH. Sutorius Translator J. E. Sahetapy *Hukum Pidana kumpulan Bahan Penataran Hukum Pidana Dalam Kerjasama Hukum Indonesia –Belanda* Liberty Yogyakarta ed. 2 2003 p.34-35.

<sup>7</sup> Djoko Prakoso *Alat Bukti dan Kekuatan Pembuktian di dalam Proses Pidana* Yogyakarta: Liberti 1988 p.36

The protection given to maintaining the balance of a notary relating to maintain the confidentiality deed with the interests of law enforcement agencies in carrying out their duties. As affirmed in the wording of Article 66 of Notary law.<sup>8</sup>

In addition to the provisions of legislation to remove the obligation dissenter notary, when according to the law there is an obligation to speak up, if a person called as a witness in the trial. Notwithstanding the foregoing, the notary can still keep the contents of the deed and the information obtained in order to deed by using right of refusal / right to withdraw as a witness given to him, particular in criminal justice to the provisions of Article 170 paragraph (1) and (2) Criminal Procedure Code, states:

- They were selected for the job, dignitary or position are obliged to keep a secret, can be requested exempted from the obligation to testify as a witness, about the things entrusted to them.
- Judges determine the legitimacy of all the reasons for the request.

Right of refusal granted by the Act to the notary is an exception to the general rule that any person called as a witness must testify. Notary no obligation to give evidence as far as the contents of the deed and the information obtained in the execution of office. Obligation not to speak based on the secret oath of office, Article 4 Paragraph (2), Article 16 Paragraph (1) letter e and Article 54 rule out UUJN the general obligation to gives testimony. The provisions it confirms that the notary is not allowed to testify about what is contained in the deed he had done, neither of which is Partij deed or deed ambtelijke.

Based on the above opinion can be seen that to determine how far right of refusal held by a notary to be seen from the birth right of refusal. As is understood that the right of refusal notary notary dissenter was born from the obligation to keep the contents of the deed and all information obtained in the execution of his office.

In connection with the calling notary as a witness in the trial already should use the right break up because according to the legislation both civil and criminal, no one can force the notary to unlock the secrets of his post without any apparent reason, unless there is legislation explicitly abort rights the dissenter. This is based on the use of right of refusal notary reasons relating to the obligation reject the oath of office as affirmed in Article 4 Paragraph (2) and Article 16 paragraph (1) letter E.

## **2.2. The limits of liability shall be kept confidential should have been set in UJN in the Future?**

In Notary law regulate matters concerning the implementation of his duties, one of which regulates the obligation of the notary to keep the contents of the deed and the information obtained in carrying out the office and keep the deed were made in accordance with the oath of office.

---

<sup>8</sup>See Article 66 UJN states "For kepentigan judiciary investigators prosecutors or judges with the approval of the Supervisory Council of the Sar authorized to: a) Take a photocopy minutes of certificates and / or letters are attached to the minutes of a notary deed or protocol in storage notary; and b) Calling the notary to be present in the examination relating to a deed made or protocols that are in storage notary.

Legal Certainty normative means a regulation made and enacted exactly as set out clear and logical. Obviously here in the sense that there are no norms obscurity or doubt (interpretations), and logical in the sense that it can be a system of norms the other norms that do not clash or conflict norm.<sup>9</sup>

### 3. Closing

#### 3.1. Conclusion

That the obligations of the notary that must be kept berdasarkan Pasal 4 Paragraph (2) and Article 16 paragraph (1) letter e UUJN includes: the entire contents aktayang consists of the initial certificate, the agency deed and the final deed, deeds made notaries as defined in Article 54 UUJ, as well as a series of statements and facts notified by the client to the notary deed stated in whether or not listed in the deed in the deed. In connection with the criminal justice process that must be followed in connection notary calling as a witness, the confidentiality obligations of this position is relative. However, if the notary deed choose to keep the overall content then it covers every part from deed start from scratch deed, deed agencies until the end of the deed. Thus, in order to provide legal certainty associated boundary break up responsibility notary in UUJN the future can be given an explanation of meaning of sound Article 4 paragraph (2) regarding the content of the deed includes everything what is written in the deed start from beginning deed, entity certificates by the end of the deed that is contained in one yang tersusun unity eventually became the authentic act as provided for in Article 38 of the Law on Notary. While the clarity of the purpose of Article 16 Paragraph (1) letter especially in the phrase "... all of information obtained in order to deed.

#### 3.2. Suggestion

Based on the discussion of the problem, the authors propose suggestions that the law enforcement process should be transparent carried out against anyone who violates, and to carry out the legal proceedings against anyone should be examined to obtain legal certainty.

### 4. Bibliography

- [1] Abdul Ghofur 2009 *Lembaga Kenotariatan Indonesia* UUI Press Yogyakarta.
- [2] Sjaifurracman 2011 *Aspek Pertanggungjawaban Notaris dalam Pembuatan Akta* Mandar Maju Bandung.
- [3] Barda Nawawi Arief 2007 *Perkembangan Sistem Pemidaan di Indonesia* Pustaka Magister Semarang.

---

<sup>9</sup>Yance Arizona Kepastian Hukum <http://groups.yahoo.com>, Accessed on 17 May 2018.

- [4] D. Schaffmeister N. Keijzer dan E. PH. Sutorius Penerjemah J. E. Sahetapy 2003 *Hukum Pidana kumpulan Bahan Penataran Hukum Pidana Dalam Kerjasama Hukum Indonesia –Belanda* Liberty Yogyakarta Ed. 2.
- [5] Djoko Prakoso 1988 *Alat Bukti dan Kekuatan Pembuktian di dalam Proses Pidana* Yogyakarta: Liberti.
- [6] Yance Arizona *Kepastian Hukum* <http://groups.yahoo.com>.
- [7] Notary law